CLERK

Petition and Transcript of Record

Supreme Court of the United States

OCTOBER TERM, 1930

No. 337

BOSTON PRESSED METAL COMPANY,
PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED AUGUST 8, 1930

CERTIORARI GRANTED OCTOBER 20, 1930

(35,259)

(35,259)

SUPREME COURT OF THE UNITED STATES

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[fol. 1] IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 337

BOSTON PRESSED METAL COMPANY, Petitioner,

v.

THE UNITED STATES, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MAY IT PLEASE THE COURT:

The petition of the Boston Pressed Metal Co. respectfully shows to this Honorable Court:

Summary Statement of the Matter Involved

The petitioner, a corporation, filed its Federal income tax return for the year 1918 and paid taxes shown thereon in the amount of $30,532.77. In 1921 an additional tax of $13,299.65 was assessed against the petitioner. This assessment was not paid. On August 27, 1924 the Commissioner of Internal Revenue allowed an overassessment to the petitioner for the year 1918 in the amount of $22,530.14 of which $13,299.65 was applied as an abatement of the prior assessment in the same amount, $5,938.11 was credited against an additional tax for the year 1920 and the balance, $3,844.94, the amount involved in this proceeding, was credited against a tax claimed to be due from the petitioner for the year 1917.

The return for 1917 was filed on March 30, 1918. On March 7, 1921 the Commissioner of Internal Revenue made an additional assessment for the year 1917. On February 24, 1921 the petitioner filed a claim for abatement covering this additional assessment and also the additional assessment of $13,299.65 for 1918. The 1918 assessment was later abated in full.

The balance of the overassessment of $3,844.94 for the year 1918 was credited against the outstanding assessment [fol. 2] for the year 1917, above referred to, on January 7, 1925.

The petitioner filed suit in the Court of Claims asking judgment for $3,844.94, the overassessment found and allowed by the Commissioner of Internal Revenue for the year 1918 on the ground that the credit of that amount against the outstanding tax for the year 1917 was void because it was made after the expiration of the statute of limitations on collection of taxes for the year 1917.

The Court held that although the credit was made after the statute of limitations had expired with reference to the taxes for 1917 no recovery would be allowed because of the provisions of Section 611 of the Revenue Act of 1928.

Questions Presented

1. Do the provisions of 611 of the Revenue Act of 1928 (C. 852, 45 Stat. 875) apply to this case?

2. Assuming that the provisions of Section 611 of the Revenue Act of 1928 are applicable to this case, does the record establish that the collection of the tax was stayed within the meaning of Section 611 of the Revenue Act of 1928?

3. Is Section 611 of the Revenue Act of 1928 constitutional?

Reasons Relied on for the Allowance of the Writ

1. The questions involved in this case with reference to Section 611 of the Revenue Act of 1928 are substantially the same as those involved in the cases of Graham and Foster, Co-partners, etc. petitioners v. Goodcell, Collector, No. 589, October Term, 1929, in which case this Court granted a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit on March 3, 1930, and Oak Worsted Mills, petitioner, v. The United States, No. 104, October Term, 1930 and Taft Woolen Co., petitioner v. The United States, defendant, No. 105, October Term, 1930, in which cases this Court granted writs of certiorari to the Court of Claims on June 2, 1930.

2. In addition to the questions involved in the above cases, this case involves a question of whether or not Sec-
[fol. 3] tion 611 has any application to a case in which the petitioner is suing to recover an overpayment allowed by the Commissioner of Internal Revenue for a year in which

no claim for abatement was filed, which overpayment instead of being refunded to the petitioner was credited against a tax for another year at a date when the collection of said tax was barred by statute.

The decision of the Court below on this question is in conflict with the decision of the United States District court for the Northern Division of Ohio in the Peerless Paper Box Manufacturing Company v. Routzahn (22 Fed. (2d) 459).

Wherefore your petitioner respectfully prays that this petition for a writ of certiorari to review the judgment of the court of Claims be granted, and that said judgment of the Court of Claims may be reversed by this Honorable Court and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

Boston Pressed Metal Company, by Harry Friedman, Attorney for Petitioner.

[fol. 4] [Endorsed:] In the Supreme Court of the United States, October Term, 1930. Boston Pressed Metal Co., petitioner, v. The United States, respondent. Petition for write of certiorari to the Court of Claims. Harry Friedman, Attorney and Counsellor at Law, Earle Building, Washington, D. C.

[fol. 1]

COURT OF CLAIMS OF THE UNITED STATES

No. K-99

BOSTON PRESSED METAL COMPANY, Claimant,

v.

THE UNITED STATES, Defendant

I. PETITION—Filed March 27, 1929

To the Honorable the Court of Claims and to the Honorable the Judges thereof:

The claimant, the Boston Pressed Metal Company, by this, its petition, respectfully shows:

(1) The claimant at all times hereinafter mentioned and at all times material to this proceeding was and is a corporation organized and existing under the laws of the State of Massachusetts, engaged in the metal stamping business, with its principal office and place of business at Worcester, Massachusetts.

(2) The claimant has a just claim against the defendant for $3,844.94 Federal income and profits taxes overpaid for the year 1918 and illegally retained by the defendant, to-[fol. 2] gether with interest thereon at 6 per cent per annum from the date paid until repaid to the claimant.

(3) The claimant filed its income and profits tax return for the year 1918 on or about March 15, 1919, and paid taxes thereon in the amount of $30,530.24, to the Collector of Internal Revenue, Boston, Massachusetts. Thereafter on or about October 23, 1924, the Commissioner of Internal Revenue found and allowed an overassessment in the amount of $22,530.14, of which $13,299.65 was applied as an abatement to an unpaid additional tax for the year 1918, $5,385.55 as a credit against an additional tax of $5,385.55 for the year 1920, leaving a balance refundable to the taxpayer of $3,844.94.

(4) Thereupon, the Commissioner of Internal Revenue, instead of refunding said balance of $3,844.94 to the claimant erroneously and illegally credited same against alleged taxes for the year 1917 in the same amount.

(5) The income and profits tax return of the claimant for the year 1917 was filed on March 30, 1918.

(6) The aforesaid overpayment of $3,844.94 for the year 1918 was credited against the additional taxes for the year 1917 on, to wit, October 23, 1924, a date more than five years after the return for 1917 was filed.

(7) Claims and demands have been filed with the Commissioner of Internal Revenue for the refund of the aforesaid overpayment of $3,844.94 but the Commissioner refuses to make and has not made said refund.

(8) Section 609 (a) of the Revenue Act of 1928 provides that:

"Any credit against a liability in respect of any taxable year shall be void if any payment in respect of such liability [fol. 3] would be considered an overpayment under Section 607."

Section 607 of the Revenue Act of 1928 provides that:

"Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid (whether before or after the enactment of this Act) after the expiration of the period of limitations properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claims."

Section 277 (a) (2) of the Revenue Act of 1924 provides that:

"The amount of income, excess-profits, and war-profits taxes imposed by the Act entitled 'An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes,' approved August 5, 1909, the Act entitled 'An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes,' approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, and by any such Act as amended, shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period."

(9) The claimant has at all times borne true allegiance to the Government of the United States. It has not in any way voluntarily aided, abetted, or given encouragement to rebellion against such Government. It is and always has [fol. 4] been the sole and absolute owner of the claim here presented. It has made no transfer or assignment of said claim or of any part thereof or of any interest therein. It is justly entitled to the amount claimed from the United States of America, after allowing all just credits and set-offs.

(10) The claimant believes the facts as hereinabove stated to be true.

Wherefore the claimant prays judgment in its favor against the United States of America for the sum of $3,844.94, with such interest and costs as are allowable by law.

Boston Pressed Metal Company. R. M. Cook, President. Harry Friedman, Attorney for Claimant, 653 Earle Building, Washington, D. C. Boston Pressed Metal Company, Maine. (Corporate Seal, 1906)

[fol. 5] *Duly sworn to by R. M. Cook. Jurat omitted in printing.*

[fol. 6] II. General Traverse—Filed May 6, 1929

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

Herman J. Galloway, Assistant Attorney General.
C. R. P.

III. Argument and Submission of Case

On April 14, 1930, this case was argued and submitted on merits by Mr. Harry Freidman, for the plaintiff, and by Mr. C. R. Pollard, for the defendant.

[fol. 7] IV. Special Findings of Fact, Conclusion of Law, and Opinion of the Court by Green, J.—Entered June 2, 1930

This case having been heard by the Court of Claims, the court, pursuant to the stipulation of the parties, makes the following

Special Findings of Fact

1. Plaintiff is a corporation, and on March 30, 1918, filed an income and profits tax return for the calendar year 1917, and paid the same during 1918. In December, 1919, the

commissioner made an additional assessment, which was paid; and a further additional assessment on January 7, 1921, in the amount of $6,277.77, upon which on June 5, 1925, there was a balance owing on the tax of 1917 of $3,844.94.

On June 16, 1919, plaintiff filed an income and profits tax return for the calendar year 1918 disclosing a tax of $30,532.27, and paid the same during 1919, the last installment being paid on December 17, 1919. On January 7, 1921, the commissioner made an additional assessment against the plaintiff for the year 1918 of $13,299.65.

2. A claim for refund for $19,455.86 was filed by plaintiff on May 22, 1920. A claim for abatement for the sum of $19,577.42 (being $6,277.77 for the 1917 period and $13,299.65 for the 1918 period) was filed by plaintiff on February 24, 1921; on the same date a claim for refund for $5,938.11 was filed. On March 15, 1921, plaintiff filed a claim for a credit for the sum of $5,938.11. All of these claims were rejected in full by the commissioner on August 20, 1924.

On March 3, 1924, plaintiff filed a claim for refund for $25,000 for the year 1918. On August 27, 1924, the commissioner allowed the claim in the sum of $22,530.14 and rejected it for the balance of $2,469.86, and made a certificate of overassessment accordingly.

3. On January 7, 1925, the sum of $13,299.65 was abated on the additional assessment for 1918; $5,385.55 was applied as a credit against the additional tax of that amount for [fol. 8] the year 1920; and $3,844.94, the amount now in suit, was credited by the collector against the unpaid additional assessment for the year 1917.

4. On March 12, 1925, plaintiff filed a claim for refund in the sum of $22,530.14 for the year 1918. This claim was rejected by the commissioner on July 23, 1925.

5. On July 14, 1928, plaintiff filed a claim for refund for $6,277.77, as well as $2,432.83 paid by plaintiff on June 5, 1925, which includes the amount of $3,844.94 now in suit, upon the ground that the tax was collected after the statutory period in which collection could legally be made had expired. The commissioner rejected this claim.

Conclusion of Law

Upon the foregoing special findings of fact, which are made part of the judgment herein, the court decides, as a conclusion of law, that plaintiff is not entitled to recover, and its petition is therefore dismissed.

Judgment is rendered against the plaintiff in favor of the United States for the cost of printing the record in this case, the amount thereof to be ascertained by the clerk and collected by him according to law.

Opinion

GREEN, Judge, delivered the opinion of the court:

This is an action to recover taxes on the ground that they were paid after the expiration of the period of limitations.

The plaintiff filed its Federal income tax return for the year 1917 on March 30, 1918. An additional assessment for said year was made in December, 1919, and a further additional assessment on January 7, 1921, in the amount of $6,277.77. A claim for the abatement of said tax in the sum last mentioned was filed February 24, 1921, which was rejected in full on August 20, 1924. Of this amount plaintiff paid in cash $2,432.83 on June 5, 1925, leaving a balance owing for said year in the amount of $3,844.94.

The plaintiff filed its income tax return for 1918 on June 16, 1919, disclosing a tax of $30,532.27. This tax was paid in installments, the last payment being made on December 17, 1919. An additional assessment for said year was made on January 7, 1921 in the amount of $13,299.65. A claim for the abatement of said additional tax in the same amount was filed on February 24, 1921, and rejected August 20, 1924. On March 3, 1924, plaintiff filed a claim for refund for $25,000 for the year 1918. This claim on August 27, 1924, was rejected in the amount of $2,469.86 and allowed for $22,530.14. This allowance of $22,530.14 upon the claim for refund was applied by the collector as follows: $13,299.65 to the unpaid additional assessment for the year 1918, above referred to; $5,385.55 as a credit against an additional tax for the year 1920; and $3,844.94 was credited January 7, 1925, against the unpaid additional assessment for the year 1917. It will be observed in connection with

this last credit that it was made after the statute of limitations had expired with reference to the taxes of 1917, but before the passage of the 1926 revenue act, and it is for this amount and on account of its application after the expiration of the period of limitations that plaintiff brings this suit.

[fols. 9 & 10] We have heretofore held in the case of Oak Worsted Mills v. United States, 68 C. Cls. 539, upon similar facts, that where a tax has been assessed in time, a plea in abatement has been filed, the collection of the tax stayed, the plea in abatement determined, and the amount found to be due collected, there can be no recovery of the amount so collected, notwithstanding the collection was made after the period of limitations for the collection of the tax had expired. This holding was based upon sections 607 and 611 of the revenue act of 1928. See Oak Worsted Mills v. United States, supra; Gotham Can Co. v. United States, 68 C. Cls. 749; and Mascot Oil Co. v. United States, No. K-67, decided June 2, 1930. It is contended on behalf of plaintiff that this case differs from those cases in that the amount which is sought to be recovered was collected by taking it out of a refund allowed and crediting it upon a tax for a previous year as to which the limitation for collection had expired, and that the amount so credited can be recovered under the provisions of section 609 (a) of the revenue act of 1928, which reads as follows:

"Sec. 609. Erroneous Credits.—(a) Credit Against Barred Deficiency.—Any credit against a liability in respect of any taxable year shall be void if any payment in respect of such liability would be considered an overpayment under section 607."

We do not think this contention is well founded, but consider it clear that under the express language of section 609 the credit is treated as a "payment in respect of such liability" against which ("against the liability") the credit is taken. When the collector applied part of the money, which was due on the refund, to another tax, the relation of plaintiff and defendant to the transaction so far as this question is concerned was in law the same as if the collector had received cash from the plaintiff; and by the express language of section 609 the question of whether it is to be

considered an overpayment, and hence recoverable, is to be determined under section 607, which in turn under its provisions depends on section 611. We therefore consider the question involved in the case at bar the same as that heretofore decided in the cases cited.

It follows that plaintiff's petition must be dismissed, and it is so ordered.

Williams, Judge; Littleton, Judge; and Booth, Chief Justice, concur.

[fol. 11] V. JUDGMENT OF THE COURT—June 2, 1930

At a Court of Claims held in the City of Washington on the 2d day of June, A. D. 1930, judgment was ordered to be entered as follows:

Judgment is rendered against the plaintiff in favor of the United States for the cost of printing the record in this case, the amount thereof to be ascertained by the clerk and collected by him according to law.

No printing having been done by the court in this case, no costs are taxed.

[fol. 12] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 20, 1930

The petition herein for a writ of certiorari to the Court of Claims is granted, and the case is advanced and assigned for hearing immediately following case No. 323, Second National Bank of Saginaw, Saginaw, Michigan, Trustee, etc., vs. The United States.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

FILED
SEP 17 1930
CHARLES ELMORE CROPL
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 337.

BOSTON PRESSED METAL CO., *Petitioner,*

v.

THE UNITED STATES, *Respondent.*

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

HARRY FRIEDMAN,
Attorney for Petitioner.

Munsey Building,
Washington, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

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OCTOBER TERM, 1930.

No. 337.

BOSTON PRESSED METAL CO., *Petitioner,*

v.

THE UNITED STATES, *Respondent.*

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

I.

OPINION OF THE COURT BELOW.

The opinion of the Court of Claims has not been officially reported. It was rendered by the Court below on June 2, 1930, and will be found printed in the record at pages 8 and 9.

II.

JURISDICTION.

The jurisdiction of this court is invoked under Section 3 (b) of the Act of February 13, 1925 (43 Stat. 936).

The final judgment of the Court of Claims was entered on June 2, 1930 (R. 10). Application for writ was presented August 8, 1930.

The suit brought in the Court of Claims is for the recovery of an overassessment of corporation income and profit taxes collected for the year 1918, illegally retained by the defendant, jurisdiction of which is conferred upon the Court of Claims by Section 145 of the Judicial Code and Section 3226 of the Revised Statutes.

III.

THE FACTS.

The facts of the case are printed in the petition (R. 1 and 2) and to avoid repetition, counsel begs leave to refer thereto.

IV.

STATUTES INVOLVED.

The statutes involved in this case are printed in the petition (R. 4-5) and to avoid repetition, counsel begs leave to refer thereto.

V.

SPECIFICATION OF ERRORS TO BE URGED.

The errors which the petitioner urges as grounds for the granting of the writ of certiorari and for the review and reversal of the decision of the Court of Claims are:

1. The Court below erred in finding and holding that Section 611 of the Revenue Act of 1928 is applicable to this case.

2. The Court below erred in finding and holding that the collection of tax was "stayed" within the meaning of the Section 611 of the Revenue Act of 1928.

3. The Court below erred in failing to find and hold that the application of Section 611 to this case will render that Section unconstitutional.

VI.

THE ARGUMENT.

Summary of Argument.

A. The provisions of Section 611 of the Revenue Act of 1928 do not apply to this case for the following reasons:

1. The 1918 overassessment sought to be recovered in this case was not covered by a claim for abatement.
2. They are not applicable.
3. They should not be given retroactive effect.
4. The collection of no part of the tax for 1917 was "stayed" by a claim for abatement or otherwise.

B. The application of Section 611 of the revenue Act of 1928 to this case would render it unconstitutional for the following reasons:

1. The power conferred on Congress by the Sixteenth Amendment is limited to the laying and collecting of taxes on income.

2. The petitioner would be deprived of its property without due process of law and without just compensation in violation of the Fifth Amendment.

THE ARGUMENT.

The Provisions of Section 611 of the Revenue Act of 1928 do Not Apply.

In this case the petitioner sued for a recovery of an overassessment already allowed by the Commissioner of Internal Revenue for the year 1918. There was no claim for abatement filed for the year 1918 which was applicable to the amount of this overassessment. Instead of refunding the overassessment to the petitioner the Commissioner of Internal Revenue credited said overassessment against an alleged tax for the year 1917. The credit was made at a date when collection of the tax for 1917 would have been illegal because of the provisions of Section 277 (a) (2) of the Revenue Act of 1924. A claim for abatement had been filed for the year 1917, but there is no finding by the Court to establish that the collection of the 1917 tax was "stayed" within the meaning of Section 611 nor is it material in this case whether or not a claim for abatement was filed for 1917, as this suit is not a suit for the recovery of a tax paid for 1917, but for the recovery of an overassessment already allowed for the year 1918.

The decision below is contrary to and in conflict with the decision of the District Court of the United States for the Northern Division of Ohio in Peerless Paper Box Manufacturing Company (22 F. (2d) 459) and the published rulings of the Commissioner of Internal Revenue (L. O. 1095) (I-1 C. B. 313).

Section 611, if Construed to Apply, Would Be Unconstitutional.

This Court on March 3, 1930, granted a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit on the petition of Graham & Foster, Co-partners, etc. v. Goodcell, Collector, No. 589, October Term 1929, to review the decision of that Court with reference to the application and constitutionality of Section 611 of the Revenue Act of 1928. This Honorable Court has granted similar writs in Oak Worsted Mills v. The United States and Taft Woolen Co. v. United States Nos. 104 and 105, October Term 1930. The application and constitutionality of Section 611 are also presented in the petition in this case and counsel respectfully submits that the same reasons exist for the allowance of the writ as were presented to the Court by the petitioners in the above-mentioned cases.

CONCLUSION.

It is therefore respectfully submitted that this case is one calling for and demanding the exercise by this Court of its supervisory powers in order that there may be a final determination of the authority of the Commissioner of Internal Revenue to retain an over-assessment already allowed and to apply such over-assessment against a tax barred for collection by the statute of limitations; and that there may be a final determination of the construction and constitutionality of the provisions of Section 611 of the Revenue Act of 1928 and that to such ends the writ of certiorari should be granted and this Court should review

the decision of the Court of Claims and finally reverse it.

HARRY FRIEDMAN,
Attorney for Petitioner.

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